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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,150	03/05/2001	Yuji Nomura	FUJY 17.297	4621
26304	7590	09/01/2005	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP			NGUYEN, BRIAN D	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	
			2661	

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,150

Applicant(s)

NOMURA ET AL.

Examiner

Brian D. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the amendment filed on 6/16/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-18 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 10 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-7, 11-16, and 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibson et al (6,680,943).

Regarding claim 1, Gibson discloses a label switch network system having a plurality of label switch nodes interconnected by network links where layer 2 paths are set up by specified routes between the plurality of label switch nodes from a network ingress to a network egress (see figure 1), comprising: an ingress node (15) which is disposed at the ingress of the label switch network that transfers packets corresponding to packet flows based on labels, and which selects and sets up layer 2 paths for transferring the packets with reference to the header or payload information of the packets; a policy server (server 35) that instructs the ingress node to set up the layer 2 paths in compliance with policy control protocols when at least one of a user makes a request or a status change in the network arises, and controls the ingress node and the plurality of label switch nodes (see col. 8, line 42-col. 9, line 37).

Regarding claims 2-7, Gibson discloses the policy server creates the transfer control information to be supplied to the nodes in the network wherein the routing of packets through the

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network is based on quality of service parameters (see abstract). Gibson also discloses whether to select existing paths or setup new paths (see col. 8, lines 13-16).

Regarding claims 11-16, claims 11-16 are method claims that have substantially the same limitations as the apparatus claims 1-7. Therefore, they are subject to the same rejection.

Regarding claims 20-23, claims 20-23 are method claims that have substantially the same limitations as the apparatus claims 1-7. Therefore, they are subject to the same rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-9 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson in view of McAllister (6,697,329).

Regarding claim 8, Gibson does not specifically disclose working path and spare path. However, McAllister discloses these limitations (see col. 7; line 50-col. 13, line 33). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the technique of setting up the paths as taught by McAllister in the system of Gibson to route the packets through another path when the main path is failed in order to maintain the communication.

Regarding claim 9, Gibson in view of McAllister does not specifically disclose stop the other traffic from using the spare path and to make the spare path accommodate traffic which the

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working path was carrying when a failure arises in the working path. However, it is obvious that when routing data packets through the network based on quality of service, lower priority resources will be preempted to provide the resources to a higher priority service. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preempt the low priority resources in order to provide and guarantee quality of service for higher priority service.

Regarding claims 17-18, claims 17-18 are apparatus claims that have substantially the same limitations as claims 8-9. Therefore, they are subject to the same rejection.

Allowable Subject Matter

5. Claims 10 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1-9, 11-18, and 20-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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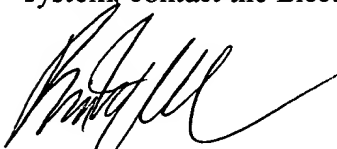
Mauger et al (6,882,643), Anerousis et al (6,760,775), Chiu et al (6,744,767), Gibson (6,678,264), Hsu (6,363,319).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084.

The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



8/17/05

BRIAN NGUYEN
PRIMARY EXAMINER